Arrêt de la Cour
Case C-305/01

Finanzamt Groß-Gerau
v
MKG-Kraftfahrzeuge-Factoring GmbH

(Reference for a preliminary ruling from the Bundesfinanzhof)

«(Value added tax – Sixth Directive 77/388/EEC – Field of application – Factoring – Factoring company purchasing debts and assuming the risk of the debtors' default)»

Opinion of Advocate General Jacobs delivered on 6 March 2003 I - 0000 Judgment of the Court (Sixth Chamber), 26 June 2003 I - 0000
Summary of the Judgment
1..Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Economic activities for the purpose of the Sixth Directive – Meaning – Purchase of debts with assumption of the risk of the debtors' default – Covered
(Council Directive 77/388, Arts 2, 4 and 17)
2..Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Exemptions provided for by the Sixth Directive – Banking transactions referred to in Article 13B(d)(3) – Exclusion of debt collection and factoring – Meaning – Purchase of debts with assumption of the risk of the debtors' default – Covered
(Council Directive 77/388, Art. 13B(d)(3))
1. On a proper construction of the Sixth Directive (77/388) on the harmonisation of the laws of the Member States relating to turnover taxes, a business which purchases debts, assuming the risk of the debtors' default, and which, in return, invoices its clients in respect of commission (true factoring) pursues an economic activity for the purposes of Articles 2 and 4 of that directive, so that it has the status of taxable person and thus enjoys the right to deduct tax under Article 17 thereof. First, the factor indisputably supplies a service to the client, consisting essentially in relieving him of the debt-recovery operations and of the risk of the debts not being paid. Second, in return for that service received by him, the client owes payment to the factor, corresponding to the difference between the face value of the debts which he has assigned to the factor and the amount which the factor pays him for the debts. see paras 49, 59, operative part 1
2. An economic activity by which a business purchases debts, assuming the risk of the debtors' default, and, in return, invoices its clients in respect of commission (true factoring), constitutes debt collection and factoring within the meaning of the final clause of Article 13B(d)(3) of the Sixth Directive (77/388) on the harmonisation of the laws of the Member States relating to turnover taxes and is therefore excluded from the exemption laid down by that provision. In accordance with its objective character, the essential aim of factoring is the recovery and collection of debts owed to a third party. Therefore, factoring must be regarded as constituting merely a variant of the more general concept of debt collection, whatever the manner in which it is carried out. see paras 77, 80, operative part 2

JUDGMENT OF THE COURT (Sixth Chamber)

26 June 2003 (1)

((Value added tax – Sixth Directive 77/388/EEC – Field of application – Factoring – Factoring company purchasing debts and assuming the risk of the debtors' default))

In Case C-305/01,
REFERENCE to the Court under Article 234 EC by the Bundesfinanzhof (Germany) for a preliminary ruling in the proceedings pending before that court between
Finanzamt Groß-Gerau

and

MKG-Kraftfahrzeuge-Factory GmbH,
on the interpretation of certain provisions of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes ? Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1),

THE COURT (Sixth Chamber),,

composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen (Rapporteur), C. Gulmann, F. Macken and J.N. Cunha Rodrigues, Judges,
Advocate General: F.G. Jacobs,
Registrar: L. Hewlett, Principal Administrator,
after considering the written observations submitted on behalf of:

?MKG-Kraftfahrzeuge-Factoring GmbH, by P.A. Schultheis, Steuerberater,
?the German Government, by W.-D. Plessing and M. Lumma, acting as Agents,
?the Commission of the European Communities, by E. Traversa and K. Gross, acting as Agents, and A. Böhlke, Rechtsanwalt,
having regard to the Report for the Hearing,

after hearing the oral observations of MKG-Kraftfahrzeuge-Factoring GmbH, represented by N. Ebbert, Rechtsanwalt, of the German Government, represented by M. Lumma, and of the Commission, represented by K. Gross and A. Böhlke, at the hearing on 9 January 2003,

after hearing the Opinion of the Advocate General at the sitting on 6 March 2003,

gives the following

Judgment

1 By order of 17 May 2001, received at the Court on 3 August 2001, the Bundesfinanzhof (Federal Finance Court) referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of certain provisions of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes ? Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1; the Sixth Directive).

2 Those questions were raised in proceedings between the Finanzamt Groß-Gerau (Tax Office, Groß-Gerau; the Finanzamt) and MKG-Kraftfahrzeuge-Factoring GmbH (MKG-GmbH) concerning the method of calculating the value added tax (VAT) which MKG-GmbH is liable to pay as a company engaging in true factoring.

Relevant provisions

The Sixth Directive

3 Article 2, which forms Title II (Scope) of the Sixth Directive, provides: The following shall be subject to value added tax:

1. the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such;

2. ...

4 Article 4 of the Sixth Directive, which constitutes Title IV (Taxable persons), states in its first two paragraphs:

1. Taxable person shall mean any person who independently carries out in any place any economic activity specified in paragraph 2, whatever the purpose or results of that activity.

2. The economic activities referred to in paragraph 1 shall comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions. The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity.

5 Article 13 of the Sixth Directive, which is headed Exemptions within the territory of the country and forms part of Title X (Exemptions), provides:

A.*Exemptions for certain activities in the public interest*

...

B.*Other exemptions*

Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse:...

(d)the following transactions:

1. the granting and the negotiation of credit and the management of credit by the person granting it; ...

3. transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection and factoring;

...

C.*Options*

Member States may allow taxpayers a right of option for taxation in cases of:...

(b)the transactions covered in B(d) ... above.

Member States may restrict the scope of this right of option and shall fix the details of its use.

6 Only the English and Swedish versions of Article 13B(d)(3) of the Sixth Directive refer in the final clause not only to debt collection but also to factoring.

7 Article 17 of the Sixth Directive, which is headed Origin and scope of the right to deduct and is included in Title XI (Deductions), provides:

1. The right to deduct shall arise at the time when the deductible tax becomes chargeable.

2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

(a)value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person;

...

National legislation

8 Paragraph 1 of the Umsatzsteuergesetz 1991 (German Law on Turnover Tax; the UStG 1991), headed Taxable transactions, reads as follows:
(1)The following transactions shall be subject to turnover tax:
1. Supplies of goods and services effected for consideration by a trader within the territory of the country in the course of business. ...
...
9 Paragraph 2 of the UStG 1991, headed Trader, business, states:
(1)Trader shall mean any person who independently carries on a trade, business or professional activity. Business includes the entire trade, business or professional activity of the trader. Any activity pursued on a continuing basis for the purposes of obtaining income is a trade, business or professional activity, even if there is no intention to make a profit or if activity of an association of persons is confined to its own members.
...
10 Paragraph 4 of the UStG 1991, headed Exemptions in respect of supplies of goods and services and own use, provides: The following transactions covered by Paragraph 1(1)(1) to 1(1)(3) shall be exempt:...
8.
(a)the granting, negotiation and management of credit and the management of security for credit, ...
(c)transactions, including negotiation, concerning pecuniary debts, but excluding debt collection, ...
11 Paragraph 9 of the UStG 1991, headed Waiver of exemption, states:
(1)A trader may treat a transaction which is exempt under Paragraphs 4(8)(a) to (g) ... as taxable if the transaction is carried out with another trader for his business.
...
12 Paragraph 15 of the UStG 1991, headed Deduction of tax, provides:
(1)A trader may deduct the following amounts in tax:
1. tax identified separately on invoices within the meaning of Paragraph 14 in respect of supplies of goods and services which have been effected by other traders for his business.
...
...
(2)No deduction may be made in respect of the tax on supplies ... of goods and services used by the trader to carry out the following transactions:
1. exempt transactions;
...
13 In the Umsatzsteuer-Richtlinien 2000 (Guidelines relating to turnover tax; the UStR 2000), the tax authorities have adopted the following provisions:
?The third sentence of Part 18, paragraph 4, of the UStR 2000 reads as follows: True factoring (that is to say, the purchase of debts with full assumption of the risk of default) does not constitute a business activity for the factoring company because it does not effect a supply for consideration either when purchasing or when recovering the debt (see the judgment of the Bundesfinanzhof ? BFH ? of 10 December 1981, V R 75/76, in BFHE 134, 470, BStBl II 1982, 200).
?The first six sentences of Part 57, paragraph 3 of the UStR 2000 state: Quasi-factoring refers to the situation where the client (Anschlusskunde) assigns to the factor debts owed to him arising from the supply of goods or services but remains fully liable in regard to the debtor's ability to pay. In economic terms the client is still the owner of the debts. The activities carried out by the factor for the client in cases of quasi-factoring are the grant of credit, assessment of debtor solvency, management of debtor accounts, preparation of analyses and statistical material and debt collection. This involves the provision of a number of principal services. Under Paragraph 4(8)(a) of the UStG 1991, the grant of credit by the factor to clients is exempt from tax. The other services provided by the factor are, on the other hand, taxable (judgment of the BFH in BFHE 134, 470, BStBl II 1982, 200).

?The first and second sentences of Part 60, paragraph 3, of the UStR 2000 provide: True factoring involves an assignment by the client to the factor of pecuniary debts owed to the former which is tax exempt under Paragraph 4(8)(c) of the UStG 1991 (judgment of the BFH in BFHE 134, 470, BStBl II 1982, 200). True factoring occurs where the client assigns to the factor debts owed to him arising from the supply of goods and services and the latter assumes the risk of any loss arising in connection with the debts acquired.

The main proceedings and the questions referred for a preliminary ruling

14 It is apparent from the papers in the case before the Bundesfinanzhof that MKG-GmbH, which brought the action giving rise to the main proceedings and is now the respondent to the appeal on a point of law before the Bundesfinanzhof, is the successor in title of MKG-Kraftfahrzeuge-Factoring GmbH and Co. KG (Factoring KG). The latter, together with MMC-Auto Deutschland GmbH (M-GmbH), formed part of the Trapp-Dries/Mitsubishi group. Over a period of time including 1991, the year in which the transactions at issue occurred, M-GmbH imported Mitsubishi vehicles and distributed them on the German market through its own dealer network. Factoring KG took on the factoring and financing operations for M-GmbH.

15 By a factoring contract of 27 June 1991, Factoring KG agreed with M-GmbH to purchase, within a framework laid down by it in advance in each case, the debts owed to M-GmbH by dealers arising from vehicle deliveries. So far as concerns the debts acquired by it in that way, Factoring KG assumed the risk of default without a right of recourse against M-GmbH. The *del credere* took effect if a dealer failed to pay the relevant invoice 150 days after it was due.

16 Factoring KG also agreed under the contract to recover the remainder of M-GmbH's debts, but with a right of recourse against it, and to manage the debtor accounts and provide M-GmbH with documents allowing it to ascertain the position with regard to its business relations with each debtor.

17 Factoring KG had to pay to M-GmbH the face value of the debts purchased by it in each calendar week, less agreed charges, on the third working day of the following week. The agreed charges comprised factoring commission of 2% and a *del credere* fee of 1% of the face value of the debts.

18 M-GmbH agreed to pay, in addition to those charges, interest calculated on the basis of the daily outstanding debit balance of the dealers with Factoring KG. The interest rate was to be 1.8% above the average interest rate payable by Factoring KG in respect of refinancing.

19 Factoring KG took the view that it also made taxable supplies to M-GmbH where it engaged in true factoring, entailing assumption of the risk of loss in relation to the debts acquired, and it issued invoices for those supplies together with the corresponding charges and interest. In its value-added-tax declaration for 1991, it accordingly deducted the sum of DEM 1 028 100 in respect of input transactions which related to those supplies.

20 After carrying out a fiscal investigation, the Finanzamt, by notice of assessment of 11 April 1997, refused to grant MKG-GmbH, as the successor of Factoring KG, entitlement to the deduction provided for in Paragraph 15(1) of the UStG 1991. In accordance with the third sentence of Part 18, paragraph 4 of the UStR 2000, it treated MKG-GmbH as not being a business in so far as it had carried out true factoring.

21 MKG-GmbH then brought an action contesting that notice before the Hessisches Finanzgericht (Finance Court, Hesse, Germany).

22 The Finanzgericht found in MKG-GmbH's favour. It agreed with MKG-GmbH's analysis that, in the case of true factoring as in the case of quasi-factoring, the factor performs a number of taxable services for the client.

23 The Finanzgericht stated in particular that it could not concur with the view that, where the factor assumes the risk of loss, he does not effect a taxable supply but acts solely on his own account as a new creditor and that he cannot therefore be placed on the same footing as a trader. It therefore held that it would not be lawful to allow a deduction in the case of quasi-factoring and to refuse it in the case of true factoring.

24 In the present case, the Finanzgericht held that the activity engaged in by Factoring KG was, as a whole, a business activity. Even in the case of true factoring, the factor supplies numerous services and a deduction is not excluded under Paragraph 15(1) of the UStG 1991.

25 The Finanzamt brought an appeal on a point of law before the Bundesfinanzhof challenging the Finanzgericht's decision.

26 According to the Finanzamt, in the case of true factoring, consisting in the purchase of debts with full assumption of the risk of loss, the factor solely receives a supply in the form of assignment of the benefit of a debt. In managing and recovering the debt which is assigned to it without a right of recourse, the factoring company does not make a supply for consideration to the other contracting party and does not therefore engage, in this connection, in a business activity. The Finanzamt relies in that regard on case-law of the Bundesfinanzhof.

27 At the hearing before the Bundesfinanzhof, the Finanzamt acknowledged that Factoring KG initially transferred the face value of the purchased debts (minus the agreed *del credere* fee and factoring commission) to M-GmbH's account by way of a grant of credit (in the form of a loan) within the meaning of Paragraph 4(8)(a) of the UStG 1991, and finally transferred that sum to M-GmbH as the purchase price for the debts only once the conditions of the *del credere* were satisfied (150 days after the invoice had in each case fallen due). Since MKG-GmbH has waived the exemption of its transactions from tax, the Finanzamt also assumes that it is entitled to a further input-tax deduction. It continues to take the view, however, that the *del credere* fee and factoring commission do not constitute consideration in respect of a taxable supply by Factoring KG but that Factoring KG was, rather, in this regard merely the recipient of a supply, consisting in the assignment by its client of debts owed to it, and was therefore not a trader, so that to that extent it was not entitled to the deduction.

28 The Bundesfinanzhof entertains doubts as to whether the case-law hitherto developed by it in this connection should be upheld.

29 After observing, first, that account should be taken of the fact that the factor all in all carries out transactions concerning debts, in accordance with Paragraph 4(8)(c) of the UStG 1991 (by which Article 13B(d)(3) of the Sixth Directive is implemented), which may be taxed only once an option for taxation has been exercised in accordance with Paragraph 9 of the UStG 1991 (by which Article 13C of the Sixth Directive is implemented), and second, that the view may be taken that the factor's transactions constitute factoring within the meaning of the final clause of the English version of Article 13B(d)(3) of the Sixth Directive, the Bundesfinanzhof states that, with regard to Article 17(2) of the Sixth Directive, it should be ascertained whether a factor engaging in true factoring uses goods and services for the purposes of his taxable transactions within the meaning of that provision.

30 In that regard it should, at the outset, be determined whether such a factor is actually a taxable person who carries out transactions or whether, as the Finanzamt submits, he is merely the recipient. In the opinion of the Bundesfinanzhof, the approach argued for by the Finanzamt, under which Factoring KG is treated as only partially taxable ? in so far as it engages in quasi-factoring and grants credit ? and is denied entitlement to deduct tax so far as concerns its true factoring unrelated to the grant of credit, is not compatible with the principle of neutrality of VAT. The national court therefore hesitates to deny entitlement to deduct in the present case on the sole ground that M-GmbH, instead of collecting its debts itself, entrusted that task to Factoring KG.

31 The Bundesfinanzhof adds that, should the Court hold that a factoring company uses the goods and services received by it for the purposes of its transactions even where it buys debts and assumes liability for the risk of loss in relation to those debts, it should also be decided whether those transactions constitute taxable transactions within the meaning of Article 17(2) of the Sixth Directive. The answer to that question depends on whether the transactions are liable to tax or exempt.

32 Since the Bundesfinanzhof took the view in those circumstances that interpretation of the Sixth Directive was required in order to determine the case before it, it decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

(1)Can a factoring company which buys debts and assumes liability for the risk of loss in relation to those debts be said to be using goods and services received by it for the purposes of its transactions?

(2)Do such activities involve taxable transactions or at any rate transactions for the purposes of Article 13B(d) of [the Sixth Directive] which may be taxed to the extent that the Member States have conferred on taxable persons a right to opt for taxation? Which of the transactions listed in Article 13B(d) of [the Sixth Directive] are involved?

33 It should be noted as a preliminary point that it is clear from the papers in the main proceedings that the questions submitted for a preliminary ruling concern only true factoring ? that is to say a transaction whereby the factor purchases from his client debts owed to him and assumes the risk of the debtors' default.

34 The national court has no doubt, on the other hand, that quasi-factoring, where the factor manages and recovers the debts owed to his client but without bearing the related risk of loss falls within the field of application of the Sixth Directive.

35 It is in the light of that observation that the questions submitted for a preliminary ruling should be answered.

Question 1

36 Given that the main proceedings are concerned with whether MKG-GmbH, as the successor of Factoring KG, enjoys the right to deduct tax under Article 17 of the Sixth Directive, the national court is asking by its first question whether a factoring company which purchases debts and assumes the risk of the debtors' default acquires goods and services which it uses for the purposes of [its] taxable transactions within the meaning of Article 17(2).

37 This question effectively seeks to ascertain whether, on a proper construction of the Sixth Directive, such true factoring transactions fall within its field of application, so that the business carrying them out is entitled to deduct input tax.

38 It is to be remembered first of all that the Sixth Directive establishes a common system of VAT based, *inter alia* , on a uniform definition of taxable transactions.

39 It follows from Article 2 of the Sixth Directive, which defines the scope of VAT, read in conjunction with Article 4, that only activities of an economic nature, carried out within the territory of the Member State by a taxable person acting as such, are subject to VAT.

40 Under the Sixth Directive, taxable person means any person who independently carries out one of those economic activities.

41 The concept of economic activities is defined in Article 4(2) of the Sixth Directive as encompassing all activities of producers, traders and persons supplying services, including the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis.

42 In accordance with the Court's settled case-law, Article 4 of the Sixth Directive thus confers a very wide scope on VAT, comprising all stages of production, distribution and the provision of services (see, *inter alia* , Case C-186/89 *Van Tiem* [1990] ECR I-4363, paragraph 17).

43 It is also apparent from the Court's case-law that, in accordance with the requirements of the principle of the neutrality of VAT, the concept of exploitation within the meaning of Article 4(2) of the Sixth Directive refers to all transactions, whatever may be their legal form, by which it is sought to obtain income from the property in question on a continuing basis (see, *inter alia* , *Van Tiem* , paragraph 18).

44 The Court has, however, made it clear that Article 4 of the Sixth Directive must be interpreted as meaning that a holding company whose sole purpose is to acquire holdings in other undertakings and which does not involve itself directly or indirectly in the management of those undertakings, without prejudice to its rights as a shareholder, does

not have the status of taxable person and therefore has no right to deduct tax under Article 17 of the Sixth Directive (see, *inter alia* , Case C-60/90 *Polysar Investments Netherlands* [1991] ECR I-3111, paragraph 17, and Case C-142/99 *Floridienne and Berginvest* [2000] ECR I-9567, paragraph 17).

45 That interpretation is based, amongst other things, on the finding that the mere acquisition and holding of shares in a company is not to be regarded as an economic activity within the meaning of the Sixth Directive, conferring on the holder the status of a taxable person. The mere acquisition of financial holdings in other undertakings does not amount to the exploitation of property for the purpose of obtaining income therefrom on a continuing basis because receipt of any dividend yielded by those holdings is merely the result of ownership of the property and is not the consideration for any economic activity (see Case C-333/91 *Sofitam* [1993] ECR I-3513, paragraphs 12 and 13, Case C-306/94 *Régie Dauphinoise* [1996] ECR I-3695, paragraph 17, and Case C-80/95 *Harnas & Helm* [1997] ECR I-745, paragraph 15).

46 However, the Court has held that it is otherwise where the holding is accompanied by direct or indirect involvement in the management of the companies in which the holding has been acquired, without prejudice to the rights held by the holding company as shareholder (*Polysar Investments Netherlands* , paragraph 14), in so far as involvement of that kind entails carrying out transactions which are subject to VAT by virtue of Article 2 of the Sixth Directive, such as the supply of services by the holding company to those companies (see *Floridienne and Berginvest* , paragraphs 18 and 19). The Court has likewise held that services such as placements which a manager makes with financial institutions of monies received from his clients in the course of managing their properties and on which he receives interest fall within the scope of VAT, since the placement constitutes the direct, permanent and necessary extension of the taxable activity (see *Régie Dauphinoise* , paragraphs 17, 18 and 19).

47 It also follows from the Court's case-law that a supply of services is effected for consideration within the meaning of Article 2(1) of the Sixth Directive, and is therefore taxable, only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient (see, *inter alia* , Case C-16/93 *Tolsma* [1994] ECR I-743, paragraph 14, and Case C-2/95 *SDC* [1997] ECR I-3017, paragraph 45).

48 It is clear that, in a case such as that in the main proceedings, the relationship between the factor and his client is governed by a contract under which there is reciprocal performance.

49 First, where, as in such a case, the factor engages in true factoring by purchasing debts owed to his client without enjoying a right of recourse against the client if debtors default, he indisputably supplies a service to the client, consisting essentially in relieving him of the debt-recovery operations and of the risk of the debts not being paid. Second, in return for that service received by him, the client owes payment to the factor, corresponding to the difference between the face value of the debts which he has assigned to the factor and the amount which the factor pays him for the debts. It is clear from the documents available to the Court that, in the main proceedings, Factoring KG retained, in accordance with the terms of the contract entered into with M-GmbH, factoring commission of 2% and a *del credere* fee of 1% of the face value of the debts purchased.

50 The making of such a payment therefore does not result from the mere fact that the debts are included amongst the factor's assets, but constitutes actual consideration for an economic activity engaged in by the factor, namely the services which he has provided to the client. There is thus a direct link between the factor's activity and the amount which he receives in return by way of payment, so that it cannot be maintained that a factor who engages in true factoring does not make a supply for consideration to the client and, therefore, that he does not pursue an economic activity for the purposes of Articles 2 and 4 of the Sixth Directive, but that he should be regarded as merely a recipient of assignments

by the client of debts owed to him. The factor's guaranteeing to the client of payment of the debts by assuming the risk of the debtors' default must be considered to be exploitation of the property in question for the purpose of obtaining income therefrom on a continuing basis, within the meaning of Article 4(2) of the Sixth Directive, where that operation is carried out, in return for payment, for a given period, as was the case in the main proceedings.

51 It follows that, contrary to the submissions of the German Government, the case-law resulting in particular from the judgment in *Polysar Investment Netherlands* , which related to the mere acquisition or holding of shares, concerns a factual and legal context different from that of the main proceedings and cannot therefore be applied by analogy.

52 Accordingly, true factoring such as that at issue in the main proceedings must be regarded as falling within the scope of VAT.

53 This interpretation is confirmed by the principle of neutrality of VAT, the judgment in Case C-18/92 *Bally* [1993] ECR I-2871 and the English and Swedish versions of the final clause of Article 13B(d)(3) of the Sixth Directive.

54 First of all, there is no valid justification for treating true factoring and quasi-factoring differently from the point of view of VAT, given that in both cases the factor makes supplies to the client for consideration and accordingly pursues an economic activity. Any other interpretation would draw an arbitrary distinction between those two categories of factoring and would make the business concerned bear, in the course of certain of its economic activities, the cost of the VAT without giving it the possibility of deducting that cost in accordance with Article 17 of the Sixth Directive.

55 It should be remembered that the deduction regime provided for in that article is meant to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities and that the common system of VAT consequently ensures complete neutrality of taxation of all economic activities which are subject to VAT, irrespective of their purpose or results (see to that effect, *inter alia* , Case C-16/00 *Cibo Participations* [2001] ECR I-6663, paragraph 27).

56 Next, the Court found in *Bally* , at paragraphs 9 and 16, that where, in the context of a transaction of sale, the price of the goods is met by the purchaser by means of a credit card and paid to the supplier by the organisation issuing the card, retention by the latter of a percentage calculated on the sales price agreed between the supplier and the purchaser represents the consideration for a service rendered to the supplier by the card-issuing organisation, consisting in particular in the guarantee of payment for the goods.

57 As MKG-GmbH and the Commission have rightly submitted, that finding made by the Court in *Bally* is equally pertinent in the context of the present case, since for the purposes of VAT, the services which a company engaging in true factoring supplies to its client are comparable in nature to the service rendered to a supplier by an organisation issuing a credit card (see, in this connection, paragraphs 49 and 50 of the present judgment).

58 Finally, the fact that the English and Swedish versions of Article 13B(d)(3) of the Sixth Directive use, in the final clause, the concept of factoring alongside that of debt collection shows that a transaction such as that at issue in the main proceedings does fall within the field of application of the Sixth Directive. As will be elaborated upon in greater detail when considering the second question submitted for a preliminary ruling, the term factoring referred to there must be interpreted broadly, covering both true factoring and quasi-factoring, given that, as an exception to a rule derogating from the application of VAT, it must be understood as applying to all possible forms of that operation.

59 In view of the foregoing considerations, the answer to the first question submitted for a preliminary ruling must be that, on a proper construction of the Sixth Directive, a business which purchases debts, assuming the risk of the debtors' default, and which, in return, invoices its clients in respect of commission, pursues an economic activity for the purposes of Articles 2 and 4 of that directive, so that it has the status of taxable person and thus enjoys the right to deduct tax under Article 17 thereof.

Question 2

60 By this question, the national court seeks to ascertain whether, should the first question submitted for a preliminary ruling be answered in the affirmative, transactions carried out by a company which engages in true factoring constitute taxable transactions within the meaning of Article 17(2) of the Sixth Directive.

61 The national court asks, more specifically, whether true factoring is subject to VAT or falls within one of the activities exempted from VAT pursuant to Article 13B(d) of the Sixth Directive, activities which may, however, be taxed where, as in the main proceedings, the Member State concerned has allowed taxpayers a right of option for taxation and the undertaking in question has expressly waived exemption of the transactions carried out by it relating to true factoring.

62 In answering this question, it should be remembered that the exemptions provided for in Article 13 of the Sixth Directive constitute independent concepts of Community law which are intended to avoid divergences in the application of the VAT system as between one Member State and another and must be placed in the general context of the common system of VAT (see, in particular, Case C-240/99 *Skandia* [2001] ECR I-1951, paragraph 23).

63 In addition, it is settled case-law that the terms used to specify the exemptions provided for by Article 13 of the Sixth Directive are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (see, *inter alia* , Case C-409/98 *Mirror Group* [2001] ECR I-7175, paragraph 30).

64 It should also be noted that the transactions exempted by virtue of Article 13B(d)(3) of the Sixth Directive are defined solely in terms of the nature of the services listed, since no reference is made to the status of the persons supplying or receiving them. Furthermore, it is clear from the Court's case-law that, given the objectives pursued by the common system of VAT of ensuring legal certainty and the correct and straightforward application of the exemptions provided for in Article 13 of the Sixth Directive, it is necessary to have regard, save in exceptional cases, to the objective character of the transaction in question (see, *inter alia* , Case C-108/99 *Cantor Fitzgerald International* [2001] ECR I-7257, paragraph 33).

65 It has already been found, in response to the first question, that a business such as that at issue in the main proceedings, which engages in true factoring, supplies to clients services for consideration which fall within the field of application of the Sixth Directive and are therefore taxable unless there is an exemption provided for by a specific provision of that directive.

66 Article 13B(d)(3) of the Sixth Directive lists, by way of such exemptions, transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments.

67 It is, however, apparent from the final clause of that provision that the Sixth Directive expressly excludes debt collection from the list of exemptions.

68 In addition, the English and Swedish versions of the provision place factoring on the same footing as debt collection, by expressly referring to it, alongside the latter, as a transaction not included in the list of exemptions.

69 While that circumstance constitutes some evidence that factoring is excluded from the exemption laid down by Article 13B(d)(3) of the Sixth Directive, the fact remains that the other language versions of this provision do not contain an express indication to that effect.

70 It is therefore necessary to view the final clause of Article 13B(d)(3) in its context and to interpret it in the light of the spirit of the provision in question and, more generally, of the scheme of the Sixth Directive.

71 As derogations from the general application of VAT, the exemptions envisaged in Article 13B(d)(3) of the Sixth Directive must be interpreted in a manner which limits their scope to what is strictly necessary for safeguarding the interests whose protection those derogations allow (see, to that effect, paragraph 63 of this judgment).

72 By contrast, as already stated in paragraph 58 of this judgment, exceptions to a rule derogating from the general application of VAT must be interpreted broadly.
73 Under all the language versions, debt collection is an exception to the exemptions listed in Article 13B(d)(3) of the Sixth Directive.
74 The English and Swedish versions of that provision also refer in this respect, on an equal footing with debt collection, to factoring.
75 In view of the requirement to interpret broadly those exceptions to a derogating provision ? whose effect is to render the transactions covered by them subject to tax in accordance with the fundamental rule forming the basis of the Sixth Directive ? first, factoring as referred to in the final clause of Article 13B(d)(3) in the English and Swedish versions of that directive must be understood as covering both true factoring and quasi-factoring.
76 As already found in paragraph 54 of this judgment, there is no justification for treating those two categories of factoring differently from the point of view of VAT.
77 Second, in the other language versions, the term debt collection must be interpreted as encompassing all forms of factoring. In accordance with its objective character, the essential aim of factoring is the recovery and collection of debts owed to a third party. Therefore, factoring must be regarded as constituting merely a variant of the more general concept of debt collection, whatever the manner in which it is carried out.
78 Moreover, the term debt collection refers to clearly circumscribed financial transactions, designed to obtain payment of a pecuniary debt, which are clearly different in nature from the exemptions set out in the first part of Article 13B(d)(3) of the Sixth Directive.
79 It follows that the language versions other than the Swedish and English versions are in no way incompatible with an interpretation under which factoring, including true factoring, is among the exceptions to the exemptions provided for in Article 13B(d)(3) of the Sixth Directive.
80 The answer to the second question submitted for a preliminary ruling must accordingly be that an economic activity by which a business purchases debts, assuming the risk of the debtors' default, and, in return, invoices its clients in respect of commission, constitutes debt collection and factoring within the meaning of the final clause of Article 13B(d)(3) of the Sixth Directive and is therefore excluded from the exemption laid down by that provision.

Costs
81 The costs incurred by the German Government and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.
On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Bundesfinanzhof by order of 17 May 2001, hereby rules:
1. On a proper construction of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes ? Common system of value added tax: uniform basis of assessment, a business which purchases debts, assuming the risk of the debtors' default, and which, in return, invoices its clients in respect of commission pursues an economic activity for the purposes of Articles 2 and 4 of that directive, so that it has the status of taxable person and thus enjoys the right to deduct tax under Article 17 thereof.
2. An economic activity by which a business purchases debts, assuming the risk of the debtors' default, and, in return, invoices its clients in respect of commission, constitutes debt collection and factoring within the meaning of the final clause of Article 13B(d)(3) of the Sixth Directive (77/388) and is therefore excluded from the exemption laid down by that

Puissochet

Schintgen

Gulmann

Macken

Cunha Rodrigues

Delivered in open court in Luxembourg on 26 June 2003.
R. Grass

J.-P. Puissochet

Registrar

President of the Sixth Chamber

1 – Language of the case: German.